Application/Control Number: 09/811,994
Art Unit: 2157

Docket No.: PALM-3615

REMARKS

Reconsideration and allowance are requested. Applicants have amended several claims to correct punctuation and not for the purpose of patentability or to narrow the scope of the claims. Applicants request entry of the amendments although this is after a Final Rejection. Claims 1 - 20 are pending.

Rejection of Claims 1, 13, 6 - 7 and 19 - 20 Under Section 102

The Examiner rejects claims 1, 13, 6 - 7 and 19 - 20 under Section 102 as being anticipated by U.S. Pat. No. 6,651,101 to Gai ("Gai"). Applicants traverse this rejection and submit that Gai fails to teach each claim limitation.

We first turn to claim 1. This claim recites a communications protocol in which the first utility program adds a token, a first category type identifier corresponding to the first data type, and a first data type identifier corresponding to the first data type, to the data. This forms an information packet which is transmitted to a second computer system. The Examiner asserts that the disclosure at col. 7, line 65 to col. 8, line 14 of Gai teaches this limitation. We respectfully submit that this is not the case and that claim 1 is allowable over Gai.

At this portion of Gai, he states:

> In particular, upon initialization at host/server 222, the application program 224 preferably issues a StartUp( ) API call 410 to the API layer 236 at flow declaration component 226. Program 226 preferably loads the StartUp( ) call 410 with an application identifier that uniquely identifies application program 224 to component 226 as an argument. The application identifier may be a globally unique identifier (GUID), which is a 128 bit long value typically provided by the application developer, although other identifiers may also be used (e.g., application name). The StartUp( ) call 410 may be returned by the flow declaration component 226 with a version number as an argument. The version number corresponds to the version of software being executed by the flow declaration component 226. Other arguments, such as the quality-of-service (QoS) and/or traffic management resources that are available to traffic flows originating from program 224, may also be returned by flow declaration component 226. Col. 7, line 65 - col 8, line 14.

Gai references that an application identifier that uniquely identifies an application program during a startup() call to the flow declaration component 226. He states that the application identifier may be a GUID with a 128 bit long value or may be some other identifier like application name may be used.

Applicants submit that the application identifier at startup taught by Gai is different from the claimed invention in several respects. For example, there is nothing in the cited portion of Gai that references three elements used to form an information packet: (1) the token; (2) the first category type identifier; and (3) the first data type identifier. Gai only mentions the single concept of an application identifier. The application identifier relates to an application and not to data. We also note that it is "program 226" that loads the startup() with an application identifier. We therefore presume that the Examiner is equating the first utility program cited in claim 1 with the component or program 226 of Gai. However, Gai differs from the present invention in that Gai only disclose loading an application identifier with the Startup() call, and simply fails to mention a token, category type identifier or a data type identifier.

Furthermore, Gai gives some insight into what the "program" 224 is. In col. 7, lines 53 0 64, he explains that the application program 224 is a stock transaction program that provides stock quotes and stock-related data to remote clients. Therefore, the application identifier of Gai simply identifies a software application via a number or the application name. This provices another contrast between the present invention of claim 1 and Gai. Gai ties its "application identifier" to a particular software program. This is clear given the quoted portion above which includes teaching that the identifier is the application name (such as, for example, "Stock Quoter"). In contrast, claim 1 ties the token, category type identifier and the data type identifier to data and not to a particular software program.

Since Gai fails to mention a token, a category type identifier or a data type identifier as is recited in claim 1 and because of the other reasons set forth above, Applicants respectfully submit that claim 1 is patentable and in condition for allowance.

Claims 6 - 7 depend from claim 1 and recite further limitations therefrom. Applicants submit that these claims are patentable as well and in condition for allowance.

Claim 13 is a communication system having similar limitations to those discussed above. Therefore, Applicants submit that claim 13 is patentable and in condition for allowance based on the above arguments.

Claims 19 - 20 depend from claim 13 and recite further limitations therefrom. Applicants submit that these claims are patentable as well and in condition for allowance.

Rejection of Claims 2 - 5, 8 - 12 and 14 - 18 Under Section 103

The Examiner rejects Claims 2 - 5, 8 - 12 and 14 - 18 under Section 103 as being obvious in view of Gai and U.S. Pat. No. 6,654,786 to Fox ("Fox"). Applicants traverse this rejection.

First, claims 2 - 5 each depend from claim 1, which as indicated above, is patentable over Gai and therefore even if Gai were combined with Fox, these references would still fail to teach each claim limitation since Gai fails to teach several limitations in the parent claim 1.

Independent claim 8 is rejected as a Section 103 rejection. Since claim 8 recites a first utility program that adds a token, a first category type identifier and a first data type identifier, Applicants submit that for the same reasons set forth above, claim 8 is patentable. Gai fails to teach these limitations that are recited in claim 8.

Claims 14 - 18 each depend from claim 13 and recite further limitations therefrom. Accordingly, these claims are allowable since the patent claim 13 is allowable.

Furthermore, Applicants submit that there is no motivation or suggestion to combine Gai with Fox. To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the

knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C Section 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C Section 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

Applicants submit that the overall differences between Gai and Fox urge against their combination. For example, the focus of Gai is to provide a system to identify specific traffic flows in networks. FIG. 2 shows the Gai system involving computers that are networked together. Gai only mentioned computers and servers and does not suggest or provide any motivation that the invention could be applicable in a wireless context. In fact, when Gai explain how the network of FIG. 2 is only illustrative, they still fail to recognize or suggest a wireless

application. In col. 6, lines 59 - 65, Gai states that the "present invention will operate with other, possibly far more complex, network topologies. For example, the repository 218 and network administrator's station 220 may be directly or indirectly connected to the policy server 216...." It is clear that the context set forth by Gai is a LAN or other network that utilizes a network administrator station 220. Gai never uses the word "wireless" or "mobile" in the disclosure.

In contrast to Gai's network flow application, Fox focuses on a method of informing wireless clients about an updated transaction. This is an exclusively wireless context for the Fox invention. As mentioned in the abstract, the Fox idea provides for sending update notifications to different wireless clients on different wireless networks. FIG. 2 shows that the wireless "Airnet" may be one of GSM, CDMA, CDPD, TDMA or PHS. The data is either pushed or pulled to or from the wireless client depending on how the updated information is communicated to the client.

Applicants respectfully submit when the entire teachings of the prior art are considered for their suggestive value as is required by the MPEP, that the preponderance of the evidence prevents these two references from being combined. The Examiner states that it would be obvious to combine these references to include portable computer systems in Gai because doing so would allow users to connect from difference geographical locations. However, the reasoning of the Examiner does not provide a prima facie case of obviousness. For example, even in a local area, different computer stations may be connected different geographical locations. Gai also mentions wide area networks or a metropolitan area network (col. 1, lines 29 - 44) which clearly implicate computer stations at different geographical locations. Therefore, the mere fact of allowing users to connect from different geographical locations is simply already taught in Gai and thus there is no need to utilize teachings from Fox for that purpose.

In the background section of Gai, he discusses numerous protocols for communicating data between computers, such as the IPv6; TCP/IP; the TCP/UDP protocol, 802.1p (which is a

LAN layer 2 quality of service protocol for traffic prioritization) and so forth. None of these are wireless protocols such as CDMA, TDMA and so forth. Applicants submit that since Gai has established his invention in the context of a LAN or a WAN with the various non-wireless protocols, that there is simply no suggestion or motivation to combine these references. Since the standard is only by a preponderance of the evidence, and further since Gai is exclusively LAN/WAN based and Fox's disclosure is exclusively wireless-based, Applicants submit that these two references should not be combined and claims 2 - 5, 8 - 12 and 14 - 18 are patentable.

CONCLUSION

Having addressed the rejection of claims 1 - 20, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

Date: May 6, 2005

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